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COMMITTEE ON REVENUE
February 16, 2006
LB 1080, 1159, 1064, 1216

The Committee on Revenue met at 1:30 p.m. on Thursday, February 16, 2006, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1080, LB 1159, LB 1064, and LB 1216. Senators present: David Landis, Chairperson; Matt Connealy, Vice Chairperson; Tom Baker; Abbie Cornett; Ray Janssen; Ron Raikes; and Pam Redfield. Senators absent: Don Preister.

SENATOR LANDIS: Ladies and gentlemen, welcome to the Revenue Committee, taking testimony on four bills today. LB 1080 is the first one, Senator Cornett. Those of you who have not been here before, we start with introducing ourselves, spell your last name for the record, identify the group that you represent, and then if you have an amendment or something that you want to give to us, wave it, and our staff will catch it and pass it out. If you've got a cell phone, turn it on silent or vibrate or whatever. And we take testimony as proponents, opponents, neutral, with both an opening by the originating senator and a personal right to close if they wish to do so. And George just turned off his cell phone. I don't know if you noticed that. We set a high standard with the staff. Here today, Senator Raikes, Senator Connealy, and myself. Senator Connealy is the Vice Chair of the committee. Erma James and George Kilpatrick, the staff of the committee, as well as committee member, Abbie Cornett, also introducer of LB 1080. Senator Cornett.

LB 1080

SENATOR CORNETT: Thank you, Senator Landis and members of the Revenue Committee. My name is Abbie Cornett and I represent the 45th Legislative District. I am here today to introduce LB 1080. This bill would allow municipalities that receive local option sales tax to receive the names and addresses of the retailers who have collected this tax for the municipality. This, in turn, would allow the cities to make sure the retailers located in the municipality are collecting the tax, and the tax is being properly distributed to the city. The reason that this bill is important to the city of Bellevue, is that Bellevue is a community with many different zip codes within its city limits. Some of the zip codes such 68147 and 68157 have

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Omaha addresses according to the post office. However, the city of Bellevue is providing the service to these areas. And this bill would allow the city to look at a list to make sure it is getting the tax money it is entitled to in these areas. The city of Bellevue was going to be down to testify today. They are not going to be here due to the weather, but I believe Mr. Krumland is going to speak to the matter for them. And with that, I will see if there are questions.

SENATOR LANDIS: Okay. Are there questions for Senator Cornett? Thank you, Abbie. Appreciate it.

SENATOR CORNETT: Oh, and we did look at trying to change the zip code designations, and the post office is not movable on this.

SENATOR LANDIS: Okay. First testifier in favor. Following Mr. Krumland, are there other supporters? Opponents? Neutral testimony? Looks like our only testifier. Gary.

GARY KRUMLAND: Senator Landis, members of the committee, my name is Gary Krumland; the last name is spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities and appearing in support of LB 1080. I am distributing two letters, one from the city of La Vista, the other from the city of Bellevue. (Exhibits 1 and 2) And as Senator Cornett mentioned, the city of Bellevue had planned to be down here, but because of the weather they send their apologies and are submitting the letter. LB 1080 creates a procedure so that cities who have the local option sales tax can go to the Department of Revenue and request a list of the retailers who pay taxes to the cities so they can make sure and help the department identify those that are within the city and that this tax should be going to the city. As you heard, in Sarpy County there are several areas where retailers are in one city. They may have an Omaha address and they have an address listed as another city when they are actually in the borders of a third one. But it also applies in other areas across the state that they are also interested in this. So it will allow the cities to help the Department of Revenue identify where the retailers are located. The Department of Revenue has done a good job. They rely on zip codes and things like that to identify where the retailers are. But we view this as a way for the cities to do an extra check to assist the Department of

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Revenue in doing this. Under the bill, the city may request that they get a list once a year to the Tax Commissioner. The request would be in on June 30 so that the department gets the request at the same time; they can handle these all at the same time. And, again, I'll emphasize only the names and addresses of the retailers are on the list; there is no confidential information. I want to thank the staff of the Department of Revenue because they gave us an input when we were drafting the bill. We consulted with them to make sure that the procedure was structured properly and that it would be the minimum amount of burden based on time and cost to the department, and so that's the way it was drafted. And if the department does find that there is a problem, we would be happy to work with the committee and the department to make sure that the procedure works smoothly.

SENATOR LANDIS: Questions for Mr. Krumland? Senator Raikes.

SENATOR RAIKES: So, right now, what does the department do to assure itself that they are doing this correctly?

GARY KRUMLAND: Well, they look at the addresses, they look at zip codes of the retailers. The city informs them of when they do annexations and things like that. So they are taking quite a few steps to identify which city a retailer is located.

SENATOR RAIKES: But there must be some perceived problem.

GARY KRUMLAND: Yeah, there is some concern that because, for example, a retailer who actually is in the city of La Vista may have, when their address for the post office may be city of Omaha, and so there is a concern that, depending on where they lie and how close they are to the border, that they may not be correctly identified. So the cities are hoping that if they have the list they can identify the location of the retailer to make sure they are within the corporate limits of the city.

SENATOR RAIKES: Okay, thank you.

SENATOR LANDIS: Other questions? Thank you, Gary. Appreciate it.

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GARY KRUMLAND: Um-hum.

SENATOR LANDIS: Proponents? Opponents? Neutral testimony? That closes the hearing on LB 1080 unless Senator Cornett would like to make additional statements, which she would, having been given the additional comments sign. Okay, I got it.

SENATOR CORNETT: Actually I was going to waive, but to answer your question, Senator Raikes, we have a number of businesses in the northwest section of Bellevue that all have Omaha addresses. I myself live in an Omaha address. This summer representatives from the city and myself sat down with Mary Jane Egr Edson to see how this money was being distributed or how they determined it. And it used to be assigned by zip codes, so it went to the city of Omaha. They now have a computer program in place where the address is typed in and it comes up what city it is, but not all of the businesses that we entered. Brenda went back to the office and with a number of addresses. Not all of them are in the system yet. So some of the businesses have the correct designation; some of them don't. And they want to be able to have a printout of the businesses inside the city limits just to make sure that they are being assigned sales tax correctly.

SENATOR RAIKES: Did you get an indication from Revenue that, look, we would give you a list of these but we can't do it because statute doesn't allow it?

SENATOR CORNETT: No. No, I didn't get that sense.

SENATOR RAIKES: So probably this could be accomplished just by communication with Revenue, except that if you put it in statute, other cities...

SENATOR CORNETT: Other cities can do it also.

SENATOR RAIKES: Okay.

SENATOR CORNETT: The big concern is, one, the program being updated, the computer program, so as the city annexes, those new addresses are added and a means of checking to make sure they have been.

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LB 1080, 1159

SENATOR RAIKES: Okay. Thank you.

SENATOR LANDIS: Other questions? Thank you, Senator Cornett. LB 1159 has an introducer who I think is not here today, but I see his trusted staff approaching. How many testifiers in favor of LB 1159? In opposition to LB 1159? Neutral on LB 1159? Janet.

LB 1159

JANET ANDERSON: Good afternoon, Senator Landis and members of the Revenue Committee. For the record, my name is Janet Anderson, A-n-d-e-r-s-o-n. I am the legislative aide to Senator Dennis Byars. He apologizes that he can't be here but he asked that I introduce LB 1159. To refresh your memory, two years ago LB 841 was introduced to this committee, and was eventually adopted by the Legislature. This bill listed an ICF-MR, which is an intermediate care facility for the mentally retarded, into the exempt portion of the sales tax statutes. A few months ago it was brought to Senator Byars' attention that ICF-MRs which also have community-based programs, concerns were raised that these programs might have to pay sales tax. LB 1159 is for all practical purposes a bill which puts into statutes what has been the practice regarding not-for-profit community-based developmental disability service providers. We did check to see if these DD providers had been charged sales tax. And to the best of our knowledge, they were not. However, the Senator believes that the statutes need to be clear on this subject, and we would like this group to be exempt in statute. The providers are almost entirely paid by state and federal dollars, and the fiscal note shows little to minimal impact to the general fund. Senator Byars would request that you advance this bill out of committee. We do have an amendment that we think further clarifies community-based programs and we would be talking about all not-for-profit community-based programs for DD services, not just those under the ICF-MR, since all community-based programs for not-for-profit are paid by state and federal dollars. (Exhibit 3)

SENATOR LANDIS: And is that the only way they can exist, Janet, by using state and federal dollars? They don't have any other source of income? Is it a self-defining function?

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JANET ANDERSON: The rates are set by the state, and they are reimbursed, and I think someone can speak better to that. But they vary...they don't have any third-party payers, very few private payers. They may get a donation here and there, but the vast, vast majority of any provider is going to be reimbursed through the state and federal dollars.

SENATOR LANDIS: Thank you. Questions for Ms. Anderson? Thank you, Janet. Appreciate it.

JANET ANDERSON: Thank you.

SENATOR LANDIS: First testifier in favor.

SCOTT HOFFMAN: Good afternoon. My name is Scott Hoffman, H-o-f-f-m-a-n. I'm here today representing MOSAIC, as its finance director for the Nebraska region. MOSAIC is a Nebraska-based national not-for-profit organization that provides services to people with developmental disabilities. We currently provide community-based services across the state in 12 communities, ranging from Omaha to Holdrege. We're here to testify in favor of LB 1159. From our inception, our legacy organizations, Bethphage and Martin Luther Homes, have been sales tax exempt. Several years ago, our exemption was denied under the premise that as an ICF-MR, we were not under the auspices of an intermediate-care facility as had previously been interpreted. As a result, we came before this committee with LB 841, asking that the statute be clarified so that our exemption could be continued. In January of this year, we were notified that our community-based services were not sales tax exempt. The financial impact of this interpretation is approximately \$102,000 annually for our organization, which receives 97 percent of its operating funding from Medicaid. As we read the current statute, it appears that the original intent was to exempt nonprofit organizations who served needy populations. For example, there is an exemption for all nonprofit organizations serving the blind. It also appears that at the time, institutions were the model that provided the services to persons with developmental disabilities, and were therefore the entities that were exempt. Today, the services have moved to the community-based model and the statute has not

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been updated to reflect the change in service model. As mentioned in the fiscal note, the Department of Revenue estimates the fiscal impact, and implementation costs of the bill is minimal. Currently, sales and use tax are not collected from the regional providers because they are organized under the interlocal governmental corporation act, and thus are considered the counties for the purpose of taxation. We are therefore asking that you support LB 1159 and move it from committee. This would clarify the intent that nonprofit community-based providers serving persons with developmental disabilities be exempt from sales tax, and it would allow already struggling not-for-profits to put their limited resources into the services and supports that are so desperately needed. I would be happy to answer any questions.

SENATOR LANDIS: Questions for Mr. Hoffman? Senator Connealy.

SENATOR CONNEALY: So, in reality, if you are doing something in an institution, it's exempt, but out in the community-based, the same function would be,...

SCOTT HOFFMAN: That would be correct.

SENATOR CONNEALY: ...at least currently, could be interpreted as taxable.

SCOTT HOFFMAN: That would be correct.

SENATOR LANDIS: Although we know of no one who is paying tax that shouldn't be under this, to our knowledge, isn't that right?

SCOTT HOFFMAN: Correct. Right. Talking with other providers as we know that for the vast majority no one is paying sales tax.

SENATOR LANDIS: In fact, not just the vast majority, you don't know of anybody who is paying sales tax under this that we know of.

SCOTT HOFFMAN: That we know of.

SENATOR LANDIS: Okay. Thanks, Scott. Are there questions

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for Mr. Hoffman? Thank you very much, Scott. Next
testifier in favor?

BRAD MEURRENS: (Exhibit 4) Good afternoon, Senator Landis and members of the Revenue Committee. For the record, my name is Brad Meurrens, M-e-u-r-r-e-n-s, and I am the public policy specialist and registered lobbyist for Nebraska Advocacy Services, Incorporated, The Center for Disability Rights, Law, and Advocacy. We are the designated protection and advocacy organization for the state of Nebraska. I am here today to support LB 1159. Exempting ICF-MR's community-based programs from sales and use taxes is a beneficial business practice. Such an exemption allows those organizations to retain capital and resources vital to maintaining operation. Expanding the sales and use tax exemptions for ICF-MRs currently in place to include their community-based programs will ensure that the eligible organizations can maintain or improve their current level of service while minimally impacting state revenue. However, we don't feel that LB 1159 goes far enough in terms of the organizations eligible for the sales and use tax exemption. We would like to see the following changes to the bill: (1), at page 2, line 7, change the language from "services exclusively to the blind," to "services exclusively to people with disabilities,"; (2), at page 2, line 19, add "community-based mental health service and centers for independent living" to the list of exempted organizations; and (3), at page 2, line 17, changing the new language "...and its community-based programs" to "community-based developmental disability service programs." This language would extend the sales and use tax exemption and its benefits to a broader array of community-based programs serving persons with disabilities, not just those that are directly affiliated with an ICF-MR. And I haven't seen Ms. Anderson's amendment, but it sounds like that's pretty much what the amendment would be getting at. These changes promote equality among organizations providing services to people with disabilities, not just those who are blind or are being served by ICF-MRs. Nonprofit organizations serving persons with disabilities should receive the same financial and operational benefits. I would be happy to answer any questions the committee might have.

SENATOR LANDIS: Thanks, Brad. Nice to see you.

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BRAD MEURRENS: Nice to see you again, Senator.

SENATOR LANDIS: Page 2, lines 17 and 18, let me read for you so that you'll be able to interpolate the amendment that Janet offered to us. Strike the new matter on those two lines.

BRAD MEURRENS: Yes.

SENATOR LANDIS: And then in line 21, strike "or" and show as stricken, and before the period insert... Okay, so we strike "or" and then instead put "...or any nonprofit organization providing community-based services for persons with developmental disabilities" period. Does that do essentially what your language does?

BRAD MEURRENS: I think so, Senator, yes.

SENATOR LANDIS: And essentially the goal is very similar.

BRAD MEURRENS: Yes.

SENATOR LANDIS: I'm not sure I see a playing card's worth of difference between your language and hers.

BRAD MEURRENS: No, Senator. And to be honest with you, I wrote this before I had even seen the amendment or had talked to Senator Byars' office, but it seems like it is exactly what number 3 would call for, yes.

SENATOR LANDIS: There is a representation from a previous witness, Brad, that I want to see whether or not that you would concur with or not. The previous witness said they didn't know of anybody who was paying this sales tax now, who would move from a taxpayer status to an exempt status. That in the ambiguity of the law, our administrators were choosing not to collect tax from these people, probably under the assumption that they were exempt, but that the law was not, on its face, clear and they didn't want to live in the ambiguity. They wanted it pretty clear. Could you confirm, from your perspective, that you know of no organization that would be moving from a taxpayer status to a non-taxpaying status on the basis of the language that you're offering, or maybe there is an example that you know to the contrary.

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BRAD MEURRENS: Well, Senator, I would support the previous testifier's assertion that there are not many, if any at all, that have paid. Although I also would share uncomfot in living in legislative language limbo.

SENATOR LANDIS: Right. But, in fact, I pushed Scott just a little further: did he know of any. And he finally said, well, I don't know of any. I'm not saying that they might not exist, but does he know of any, and the same question to you.

BRAD MEURRENS: To the best of my knowledge, Senator, no, I do not know of any who have been charged those taxes.

SENATOR LANDIS: To the best of my knowledge has a little of like Washington senatorial kind of a thing: to the best of my...

BRAD MEURRENS: It's only...

SENATOR LANDIS: You don't know of anybody who does this stuff, isn't that right, Brad?

BRAD MEURRENS: To the best of my knowledge, Senator, no, I don't.

SENATOR LANDIS: There we are. Okay. Thank you.

BRAD MEURRENS: I can't profess to know everything, but, yes, I do not know.

SENATOR LANDIS: I understand; that's right. But you don't know of anybody who does.

BRAD MEURRENS: Yes, sir.

SENATOR LANDIS: Questions for Brad? Thank you, Mr. Meurrens. Appreciate it. Good to see you.

BRAD MEURRENS: You're welcome. Thank you.

SENATOR LANDIS: Next testifier in favor? Opposition? Neutral? Janet? No, that's all right. Then in that case, we'll move on to the next bill. And if we do, can we

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take just one minute as we reconfigure our room. Let me stick my head out the door for a minute, and I'm the next introducer.

AT EASE

LB 1064

SENATOR LANDIS: Senator Connealy, members of the Revenue Committee, David Landis, principal introducer of LB 1064, a controversial measure, I understand today. Fair enough. Brought to me by Bob Hallstrom and the Nebraska Bankers Association, based on an April 2, 2005, experience in which 12 Omaha financial institutions were asked by the local administrator up there to provide CDs, distress warrants, upon funds that they held in the bank for some personal property taxpayers who had not paid their personal property tax. The rule of the state is that personal property is subject to essentially a first lien no matter what the circumstance of that property. And no matter whether it's the personal property that, in fact, the tax is being applied to, but it's any personal property, including intangible personal property, including a certificate of deposit or cash in the bank: intangible property. The normal rule around the country is that with respect to intangibles, and in some cases broader than this, but in its narrowest construction intangibles for which there is a preexisting perfected interest, that, in fact, if it's not the property that the property tax is applied to, but it's the intangible tax, that...I'm sorry, it's an intangible...that the prior perfected lien takes priority. That's the normal rule. Nebraska is one of several, but a very small number, who simply says, tax lien is a first lien against any and all tangible and intangible tax, no matter what, no matter what in time, and no matter who was there before. I told the bankers I would introduce a bill for which they could make their claim that they, in fact, should have, if they have a perfected security interest before in time, that they could make the case that that should have a higher status than the tax lien. And I believe Mr. Hallstrom is here to make that case for you.

SENATOR CONNEALY: Thank you, Senator Landis. Any questions from the committee? Seeing none, first testifier in favor.

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ROBERT HALLSTROM: (Exhibit 5) Senator Connealy, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB 1064. Senator Landis has outlined principally what LB 1064 would do, which is to change the existing Nebraska statutes to provide a fairly narrow, limited exception to the general rule that the tax lien for unpaid personal property taxes is always a first superpriority lien. That narrow exception would apply to deposit accounts and certificates of deposit for which there existed a prior perfected security interest prior in time to the issuance of the distress warrant for the unpaid personal property taxes. Essentially, just to quickly walk you through what I understand to be the process and the procedure, when there are unpaid personal property taxes, the county treasurer, under law, is authorized to issue a distress and ultimately have the county sheriff seize property and make sale of that property for the application towards the unpaid personal property tax balance. The issuance of a distress warrant goes out to the county sheriff, and the county sheriff then follows up with trying to capture the property of the taxpayer. The issue at hand which Senator Landis indicated, there were about a dozen financial institutions up in the Omaha area that, to my knowledge and recollection for as long as I've been with the Nebraska Bankers Association, was the first time that this particular issue or methodology for collection of unpaid property taxes had been brought to our attention. Last April, the financial institutions contacted the NBA, wondering what their responsibilities were. They certainly wanted to comply with whatever the law was, but having had that, at least in their experience the first time this had ever happened, they were questioning and raising concerns as to whether or not turning over the property was, in fact, authorized under state law; did they have any impact with a right of setoff or a prior perfected security interest where there are privacy issues that could come into play in having to release this information since it was their first-time experience with this. First National Bank of Omaha brought a declaratory judgment seeking some direction from the court as to what, not only were their rights and responsibilities under the law, but also the rights and responsibilities of their customers. The long and the short of it, and I've got in my testimony a little

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bit of background regarding that case, First National Bank v. Dunning, who is the Douglas County Sheriff, was that the court ruled that based on the Nebraska statute which allows the seizure of all personal property, and then defines personal property to include both tangible and intangible property, that, in fact, under existing law, the seizure of the deposit accounts or the levy upon the deposit accounts was appropriate. And the case was decided accordingly. What we have since done, in visiting with our bankers, is we have done some research, quite extensive research. We found, what is attached to my testimony, approximately 36 states where I could derive that there was a specific rule regarding the ability of what a distress warrant issues for, what is leviable or can be seized, and more importantly, what is the priority or the status of that tax lien. And there are four states that I've found that I've referenced in the materials that do much like Nebraska does right now in giving a superpriority lien position to the taxing authority. The rest of the states either do not allow intangible property to be seized because they limit the property that can be levied against to goods and chattels, thus it doesn't include intangible property, or they have a mechanism by which the taxing authority is required to formally file its lien to provide notice to the world that a lien exists and that the lien only attaches and becomes effective vis-a-vis prior perfected security interest, or it only becomes effective as of the time of filing the notice. So, in essence, a prior perfected security interest...and I might add, in all property in many of the states will trump a subsequent tax lien for which notice is filed. The procedure in that regard is very similar to what applies to the Internal Revenue Service when there is a federal tax lien. They must file at the state level, a specific notice, and only once that notice is filed does it come in and attach to the property so that a prior perfected security interest will, in fact, have priority. Senator Landis has indicated that the application of the bill is quite narrow in only applying to deposit accounts and certificates of deposit. I have stated in my testimony the background on how a security interest is taken in a deposit account or a certificate of deposit. Essentially under the Uniform Commercial Code, the concept of control becomes important. They must take control of the account. If it's issued by another bank, if a certificate of deposit, for example, is issued by another bank, they must take

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control of possession of a certificated CD or have control of an uncertificated CD, which involves giving notice to the bank that issued it, and getting an acknowledgement from that bank that they may utilize a CD if the loan goes into default, to recognize and realize on their loan. Again, I've got all of the states attached to my materials, that show the lay of the land, if you will, in the other states. The one thing I want to make clear for the record is that we are not going near as far as the vast majority of states do. What we will leave the taxing authorities with is clearly a superpriority lien that applies to all property other than certificates of deposit and deposit accounts. In the area of certificates of deposit and deposit accounts, if a bank does not have a competing prior perfected security interest, the taxing authorities remain free and clear to go after that property and to realize on it; only in the instance where you have pledged your CD for a loan at the bank and the lien is perfected prior in time to the issuance of a distress warrant will there be any adverse impact on the taxing authority. With that, I would be happy to address any questions.

SENATOR LANDIS: Questions for Mr. Hallstrom? Senator Raikes.

SENATOR RAIKES: What is the process? Prior perfected? Is that what you are...? What does that mean?

ROBERT HALLSTROM: Prior...the way the bill is drafted, Senator, and designed to do is...

SENATOR RAIKES: Prior I understand, but what is perfected?

ROBERT HALLSTROM: Perfected security interest is if a filing was required, Senator, the filing of record would need to be recorded with the Secretary of State's Office would be the normal filing location for a piece of property for which a filing was necessitated in order to perfect your security interest. In this issue, there are requisites to perfect a security interest in a deposit account, for example. Oftentimes the bank will file a security interest, but the issue under the Uniform Commercial Code is also that you have taken control of the account in accordance with the requirements of, I think it's 9-104 of the Uniform Commercial Code.

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SENATOR LANDIS: But the simple way here is, there is a difference between making a security interest and then telling the world that it exists. If I pledge my goods to you, we've created it, but at the point at which I file it and tell the world that those goods are pledged, it's perfected. And the difference between prior, which is in time, you could have one where we had made this arrangement and didn't tell the world--not good enough. Not only did we make this agreement first, but we also told the world first that there was.

ROBERT HALLSTROM: The Uniform Commercial Code talks in terms of attachment, which is when we make our agreement to pledge the collateral, and the perfection then either occurs, and it can occur in a host of different ways, but through filing, through taking physical possession of the asset, or through taking control in the case of a deposit account of a certificate of deposit.

SENATOR RAIKES: But perfection would typically only be done by banks or lenders?

ROBERT HALLSTROM: Secured parties; yes. Yeah, whoever...

SENATOR LANDIS: Well, in this situation.

ROBERT HALLSTROM: Yes.

SENATOR LANDIS: Perfection occurs all the time, but in various different settings.

ROBERT HALLSTROM: Yes.

SENATOR LANDIS: Lots of people rush down and perfect their security interests, but you don't do one on a CD or this deposit, except usually to the bank itself.

ROBERT HALLSTROM: Yes. Normally, what happens, Senator, is I may, rather than taking out a loan and having the lender take a lien on my real estate, unless for tax purposes I want to deduct the interest and so forth as the tax rules allow, it is sometimes much easier, I call up the banker, I say I have a need for \$5,000, I've got a \$10,000 CD at the bank, and he says, you just come in, and we sign a paper. I

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take possession of the certificate, I've got control of it, I've perfected my security interest. I'll give you a loan at 2 percent above whatever the CD is paying, and that's the way I do it. It's clean, it's simple. I haven't had to go to the expense of a trust deed and those types of things to take a lien on my house. The banker is protected by taking that security interest, and I've got my money and with a minimum amount of inconvenience to have that transaction completed.

SENATOR RAIKES: So would you typically also, in this kind of arrangement, have access to a checking account deposit? You've got deposit. What kind of a deposit are you talking about?

ROBERT HALLSTROM: You can. There are checking accounts, savings accounts, passbook accounts. It's not uncommon for a security agreement to have provisions that would say that the borrower, in this case, is pledging their rights to bank accounts. We have issues, the right to setoff, which is not covered in this bill. We're simply talking about the perfection of a security interest, that if I have taken the steps to perfect my security interest prior to the issuance of the distress warrant, that the law has changed, if this is adopted, would recognize that that was prior in time and would provide the limited protection against that tax lien.

SENATOR RAIKES: You can knock this down. It seems to me like you're saying with this that I, the bank, want to take precedent over the tax collector. And maybe the tax collector knew, maybe they didn't know that this wasn't going to be paid, but anyway it's not paid, and so I, the bank, in doing business, I want to get in ahead of the governmental entity that needs the tax revenue.

ROBERT HALLSTROM: Senator, I wouldn't couch it quite in those terms. I don't think the bank makes the loan and takes the security, thinking that they want to get in front of the taxing authority. More appropriately, I would say, I've made the loan based on the current conditions. There is a hidden or a springing lien in effect that comes into existence after the fact, that then I've made my loan on a certain set of conditions. And if the taxing authority or the sheriff comes in and zeros out the certificate of deposit that formed the basis for me making the loan in the

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first place, you have turned my secured loan into an unsecured loan, after the fact, on a set of circumstances that arose completely, after the fact, when I made my loan.

SENATOR RAIKES: Well, okay, I understand that. Except isn't security and secured loan sort of getting ahead? Isn't that the whole idea there, what you're trying to do?

ROBERT HALLSTROM: It always is, and that's why the perfection is the key, if you will, here, that you can't just say I've got an agreement on the side; I've got to perfect it. And whether that's filing or the requisites under the Uniform Commercial Code, you do what's recognized and required to perfect that. And then and only then are you going to get it to the head of the line, if you will.

SENATOR RAIKES: Okay, thank you.

SENATOR LANDIS: Wouldn't you have to acknowledge that the person who perfects a security interest is getting ahead of the tax collector, but is also, quite on purpose, getting ahead of everybody else on the planet?

ROBERT HALLSTROM: Yes, that's the entire system.

SENATOR LANDIS: That's the whole purpose.

ROBERT HALLSTROM: Yes.

SENATOR LANDIS: They don't single out the tax collector; they want to be ahead of anybody and everybody.

ROBERT HALLSTROM: Exactly.

SENATOR LANDIS: And it's the status of being first that makes them want to make the loan.

ROBERT HALLSTROM: Yes. The security buttresses the ability to make the loan.

SENATOR LANDIS: Questions for Mr. Hallstrom? Thank you very much.

ROBERT HALLSTROM: Thank you.

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SENATOR LANDIS: Next testifier in favor? In opposition? Richard, it's been awhile since I've seen you. How nice to see you back.

RICK BOUCHER: (Exhibit 6) Thank you, Senator. Senator Landis, members of the committee, my name is Rick Boucher, B-o-u-c-h-e-r. I'm the registered lobbyist for the Nebraska Sheriffs Association, here in opposition to LB 1064. I'm passing out now the full text of the First National Bank of Omaha v. Timothy Dunning. First National Bank brought a proceeding contesting the validity of the distress warrant process; made a lot of arguments. I would certainly encourage you to look at the full extent of the opinion. Each of the arguments that were made by First National Bank were rejected by Judge Lamberty; were not appealed; and that opinion was issued August 16, 2005. In essence, and there is certainly an important aspect. It describes it in pretty good detail from the standpoint that there was a deposit account at First National Bank. Tim Dunning had a distress warrant...

SENATOR LANDIS: Richard, my the way, I'm going to interrupt you for just a moment.

RICK BOUCHER: Yes.

SENATOR LANDIS: I read the same thing exactly the same way. I think our state law is pretty clear. Taxing authority: You have a first lien on everything. And isn't that what Lamberty basically is saying here?

RICK BOUCHER: That's what Lamberty said. Not only under...

SENATOR LANDIS: And that it's pretty darn clear.

RICK BOUCHER: Yes.

SENATOR LANDIS: And when the bank was trying to shoot a hole in that, Lamberty had no difficulty in saying, no, it's really clear; they get first priority over everybody. Isn't that...?

RICK BOUCHER: That is correct, not only on state law, but federal law--a series of arguments that were rejected simply because federal law did not extend the protections that were

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claimed by First National Bank. In essence, and certainly the County Officials will be testifying at today's presentation. Certainly a couple of the... Phil Woodward who heads the civil division at the Douglas County Sheriffs who participated in this case. Chris Lustgarten and Peter Garofalo who tried the case, wanted to be here today. The weather kept them from doing that. I'll share with the committee though, their telephone numbers, in the event there are any questions. I think that that's right. I think a studied opinion is that passing, making the change to LB 1064, is a mechanism to avoid the payment of taxes. It affects not only tangible property, intangible personal property. Some much more familiar with these provisions than others believe it may even affect the taxing authority's ability to get to real estate. Understand that the taxes have to be paid. In the event taxes are not paid, the only resort that the county attorney has is filing a felony. This was a foreign corporation in Iowa who only had a deposit, that was their connection to Nebraska. So ultimately what the law says is you can take all property. I think it has an implication for real property, is based, at least my conversations with those lawyers, but just as important you expose each of those delinquent taxpayers to criminal process. I think that it has a dramatic impact, not only on Douglas County where these cases come up. And there was a requisite clarity by Judge Lamberty. If it seemed as though it was clearer than others, as she was writing it, came at the specific request of this being published to law enforcement agencies across the state to better understand the process. So we think it's a way to avoid. We believe it is an unnecessary exposure to criminal prosecution. We believe, at least, if you fit the language into Judge Lamberty's opinion, the narrow exception which Mr. Hallstrom talked about, is not that narrow. It includes certificates of deposits, deposits accounts, other encumbrances. I mean, it is... I mean, I think narrow is not a proper characterization, that within the five lines is just about anything that can be imagined by a financial institution. For those reasons, we believe that the avoidance of tax payments is not consistent with the taxing authority; that it will have a dramatic impact. Douglas County, for instance, from November 4 to January 5, their personal property taxes that were collected went in the area of \$875,000 to \$950,000. So, understand, when you upset the priority status, that it's going to have a real impact.

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And, again, because of that impact, ultimately, I think, you expose those delinquent property taxpayers to felony proceedings. Whether that will be pursued, very expensive. Nothing...I mean, you are talking accountants and just a wide range of people that ordinarily the distress warrant would impact and provide the taxing authority with that relief from that obligation. So on that basis we would oppose it.

SENATOR LANDIS: Thank you. Are there questions for Mr. Boucher? Thank you, Richard. Appreciate it.

RICK BOUCHER: Thank you.

SENATOR LANDIS: Next testifier in opposition. Following this gentleman, how many other opponents are there? Thank you.

TERRY WAGNER: Good afternoon, Senator Landis and members of the committee. My name is Terry Wagner, W-a-g-n-e-r. I'm the sheriff of Lancaster County. I'm here today on behalf of Lancaster County and the Nebraska Sheriffs Association. I just want to voice my opposition to LB 1064. I don't want to repeat what other testifiers have or will say.

SENATOR LANDIS: Great.

TERRY WAGNER: But I think one of the things that's important to keep in mind, I don't have a daily working knowledge of distress warrants, but for my employees that do, we use liens on bank accounts on a fairly regular basis, and it's very effective for the purpose of collecting back taxes, which we are charged by statute to do. Secondly, this doesn't happen overnight. We don't get a distress warrant down when your taxes, they are in arrears when they are paid anyway, as we know. And we don't get a distress warrant down the day they are in arrears. There are public notices in the paper; there a number of legal steps that are taken. And it is perhaps...and this is 2006; we are still serving distress warrants issued in 2004. So it's a lengthy process. I think somebody who wants to commit tax evasion, all they have to do, once at any point in that process before that tax warrant is issued, is to make a secured loan on a certificate of deposit or their checking account, and we would not be able to seize that money. I

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think this would enable people to evade taxes and be tax evaders, and would result probably in a prosecution of tax evasion, which is a Class IV felony, as Mr. Boucher said. I just wanted to bring that to your attention and answer any questions the committee might have.

SENATOR LANDIS: Thank you. Are there questions for Mr. Wagner? Thank you, Terry. Appreciate it it.

TERRY WAGNER: Thank you.

SENATOR LANDIS: Next testifier in opposition?

JOE KOHOUT: (Exhibit 7) Chairman Landis and members of the committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing on behalf of Douglas County. As Mr. Boucher noted, we had two people who were going to come down and testify, and in light of the road conditions they opted not to come down. But we would make those folks available to the committee if the committee so desired, and we would get them down here at some point when the weather turns around. And I want to kind of highlight a little bit what Mr. Wagner said, and I think that's important. And that is, in a sense that if you have a security interest on one of these accounts and if someone is seeking to evade the tax, all you have to do is put it in that checking account. Put the proceeds...

SENATOR LANDIS: You actually have to do a checking account and then you have to have a perfected security interest prior to the distress warrant.

JOE KOHOUT: Right, right. And so I think it is important to note that there is room within that for a little mischief. So I think, I just wanted to highlight that and answer any questions the committee might have.

SENATOR LANDIS: Okay, thank you. Are there questions? Thank you very much.

JOE KOHOUT: Thank you.

SENATOR LANDIS: Next testifier?

LARRY DIX: Senator Landis and members of the committee, my

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name is Larry Dix. The last name is spelled D-i-x. I am here representing the Nebraska Association of County Officials in opposition to LB 1064. And, again, I will not repeat, but I will point out sort of how this loophole comes about because the treasurer will notify, by mail, the taxpayer that their taxes initially are due. There is a statement that's sent out. Then what will happen, on September 1 there is a notice that will be sent out to the taxpayer whose personal property taxes are delinquent, and it says, guess what, we're coming, and if you do not pay your taxes by September 1, then a distress warrant will be issued. Now, if this law passes, anybody...and these are people that are not paying their taxes anyway, so they are not up here at the great level. But anybody that really, really figures this out, says, ah, I got my notice; I'm going to run to the bank and tell the bank that here's why I am going to move this money because of the personal property. The bank goes and perfects it and the cities and counties... So not only can it be done, I have a feeling we're going to be warning these people, here's what's coming, and they are going to run off and perfect it, and then that puts the burden on all the other taxpayers in the county that are doing the right thing and are paying their taxes. So, for that reason alone, I believe this is not a bill that we should advance at this time.

SENATOR LANDIS: And, Larry, if that was so, we would have 30-some states who should be able to tell us stories like that. Malefactors who get notice that their taxes are coming due, an opportunity to run to a bank and get a loan, pledge collateral, sell their real estate, sell the personal property that was being taxed, convert it to cash, take it to a bank, create a secured interest in essentially a loan for that money, and beat the paying taxes. You go off to national associations. Do you know of this story coming true someplace?

LARRY DIX: I don't know the story, but I also would tell you that I don't believe...and I do believe that tax policy from state to state is very different. And many times when we say there are a number of other states that do it this way. I don't know how many other states are doing personal property that way. I cannot tell you that they are issuing a notice that tells them, hey, the sheriff is coming. So while it is easy to say it would be wild and pandemic, I

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don't know that other states' tax policies are the same. I think before we would do that, we would really want to take a good, hard examination of those.

SENATOR LANDIS: Thank you, Larry. Appreciate it. Questions for Mr. Dix? Thank you, Larry.

LARRY DIX: Thank you.

SENATOR LANDIS: Other testifiers in opposition? Neutral? That will close the hearing on this measure and we go to our last hearing of the day in the face of dwindling temperatures and increasingly icy streets.

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SENATOR BAKER: (Exhibit 8) Thank you, Chairman Landis and members of the Revenue Committee. I get the hint and I have the furthest to go of anyone on the committee.

SENATOR LANDIS: Oh, it's not you, Tom. All right.

SENATOR BAKER: I'm Tom Baker, represent District 44. I'm here to present LB 1216. I am going to preface my specific remarks of what the actually...I have an amendment to pass out here, too, Kara. And I'm concerned with this whole situation, leaving it...I'm not saying incapable hands, but lack of institutional knowledge, and perhaps George can carry on for us. But we got in this position where we had the state taking over property tax assessment. I think I'm preaching to the choir, but I have to, I think, relay to you my concern here, that we started taking counties over, state assessed counties, and the reason I have such an interest in this is my home county, Hitchcock County, is one of the nine counties that is state-assessed. And it's worked very well, and we're to the point in some of the very rural counties out there, and, granted, they are combining jobs, the treasurer, the clerk, the assessor, and so on, but at times it stresses those people out to be adequate treasurers, assessors, and clerks, all at once. So we have counties in the more rural parts of the state that are struggling a bit with assessment. And as you know, you have to have a certificate before you can...certified assessor or whatever it is...before you can run for county assessor. There are

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dog-gone few of those people out in most of these counties, hence I think we need to end our careers and I think, with the exception of Senator Raikes, the rest of us are gone after this session. But we need to give some flexibility, some latitude, to the Property Tax Administrator to do some things I think need to be done--hence, the bill. Actually, I want to address the amendment because the amendment really brings to light what I'm trying to do. On page 3 of the amendment, it allows the Property Tax Administrator, may assume the assessment function in any county with a population of 10,000 or less or directed toward the more rural counties based on the last census when such county adjoins a county in which the assessment function is being performed currently. There are nine counties. Of course, it could grow to where it is covering all the counties, I suppose, in the state with fewer than 10,000 population and be contiguous, but they would also after the first year would not exceed the current year budgeted expenditures approved for the county assessor's office by that board. So there is a limit on what it would cost to initially take over this assessment duty. If the Property Tax Administrator does do this, follow this process, then there is a notice to the county board on or before September 30, informing the county board that this process is going to take place. They can request a hearing on the matter before the Property Tax Administrator, and if they don't like that outcome they can appeal to the TERC board. So there are all kinds of safeguards built into this. I do believe that the Property Assessment and Taxation administrator will be following me. I don't know whether she is...she is up here. She is a little slow on her giddy-up, but we have a county in my district that has, I believe, still has an active application for state assessment in that county, and they are contiguous. They fall under this; they are less than 10,000. We've left this whole thing in the lurch. It works very well in our specific case, and I am very familiar with it. We have not had problems. There are counties out there that would like in; there are counties out there that need to be in this system. And hence, the bill. I have brought bills similar to this before. I would hate to leave this place with all the institutional memory going out, that how we got where we are, because I think we need to continue on. It's always been a cost issue, assuming county assessment costs. But this would be some very narrow guidelines and it would be at the property tax assessment office's

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jurisdiction or call whether they want to do this in the first place. So, that in a nutshell, is why I brought the bill and what's in it.

SENATOR LANDIS: Appreciate it, Tom. Are there questions for Senator Baker? Thank you. Oh, Senator Raikes.

SENATOR RAIKES: The cost of this thing, the fiscal note says just that costs are unknown, but your intent on this, so if the... It says the Property Tax Administrator could take it over if the cost of assessment will not exceed the current expense. So, say, a county is spending \$100,000, does that mean that it could be taken over without any additional expense by the Property Tax Administrator, or without more than \$100,000 expense? And if it \$100,000, would the expense shift from a county expense to a state expense?

SENATOR BAKER: It would shift to the state and it wouldn't exceed that \$100,000 in your example, and in most cases...I'm a proponent of this, obviously, or I wouldn't be here...you could do it more efficiently. These have to be contiguous counties. And our problem, we got into this thing when I can't remember what year we started this, and she can answer that question, but we have...the nine counties are scattered all over and there is no efficiency or economies in scale out here when she's got people in Harlan County, Hitchcock, and Keith, which are 150 miles from end to end, when she could take a county beside one of those and probably do it...I'm putting words in her mouth now...very much more efficiently than what she's doing now and what the county is doing. So if it was costing, say, Furnas County, \$100,000 now, and that's just a figure you threw out and I'll use, it could cost half that much to take it over. But that would be up to the Property Tax Administrator.

SENATOR RAIKES: What if the Property Tax Administrator and the county agreed that the state would take it over and the county would be willing to pay \$50,000 for assessment even though their...

SENATOR BAKER: Cut their costs in half That's an interesting scenario. I'd be more than willing to listen to that. That's a good question. I hope that Ms. Lang can

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answer that because that's a good thought. We might be able to make a deal here.

SENATOR LANDIS: Questions? Thank you, Tom. First testifier in favor?

CATHERINE LANG: For the record, my name is Catherine Lang, L-a-n-g. I'm the Property Tax Administrator for the state of Nebraska, and I am following Senator Baker on LB 1216. I am using this opportunity to do a couple of things. Because of the changes that we will see over time with regard to the Legislature, and in particular, the Revenue Committee, I think that it will probably always be appropriate for the Property Tax Administrator to come forward before the Revenue Committee and discuss the state assumption process, so long as it continues to exist. We currently are the assessor in nine counties, and I wanted, for the record, to give a very brief history of how this has developed over time. We took over the first counties in 1998. We took over five counties in that year: Dakota, Dodge, Garfield, Harlan, and Sherman. In 1999, we added another two counties to that mix; we added Keith and Saunders. In 2000, we added Greeley and Hitchcock. In 2001, we had a request from four counties to assume; that would be Loup, Cass, Kearney, and Scotts Bluff. And as I think everyone on this committee recalls, those were the years in which we were beginning to see declining receipts at the state level, and so a decision was made by me, as the Property Tax Administrator, to decline accepting these counties without even bringing that matter to the Legislature's Appropriation Committee for their consideration. We had no other counties request state assumption until 2005, wherein Loup County, a county that is contiguous to one of the counties that we've assumed--that would be Garfield County--made a request. We analyzed the budget needs for the county. We brought forward an appropriation to the Appropriations Committee and the Governor...the Governor actually supported the assumption of Loup County. And the cost to assume Loup County would have been virtually identical to the cost that Loup County was expending to run the office. The Appropriations Committee took it under advisement and declined to make the appropriation. This is not intended as any criticism of the Appropriations Committee, but I think we find ourselves, this office finds itself in a unique position because we have a Revenue Committee policy of state assumption that

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currently exists in statute; we have an Appropriation Committee that sits in approval of that appropriation. But it does present an interesting situation because if you have an Appropriation Committee that does not support state assumption, then there will never be state assumption. And if that's the place at which we are going to leave this, I guess that, again, as the Property Tax Administrator, I think it's still important to bring that issue before the Legislature, through the Revenue Committee, to at least assure that where we are is where people want us to be. We did have one more county request state assumption. Furnas County passed a resolution and that one was in...we had a statutory change that occurred at about the same time, so I believe they have...I think they have made a subsequent request for state assumption. It's more of a procedural snafu that's occurred, and I think we'll probably see a request from Furnas County. Furnas County is adjacent to Harlan County. I'm intrigued by...I certainly think that the amendment that's being offered is very aggressive. I'm intrigued by the idea; I think it matches up with some other interesting concepts that have been discussed regarding consolidation of governmental entities, and I guess we will see if the committee is interested in it. And I would be happy to answer any questions.

SENATOR CONNEALY: Thank you. Questions from the committee? Senator Baker.

SENATOR BAKER: Thank you. Is that something you are saying we can work on then? Maybe the counties ought to foot some of the bill on this just to provide some uniformity and clarity in what they are doing. Some of these counties, you know this better than I do, are struggling to find county assessors. Do you think they would be willing...? I see a NACO lobbyist here; maybe we can get some answers out of him. But could we make that work somehow or other, if they assume some of the cost?

CATHERINE LANG: Certainly, you could change the policy. Currently, if the state takes over the office, the state assumes all the costs of running the office except for the space. And so a policy could be changed in that regard, to create a cost-share if that was what the Revenue Committee was interested in.

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SENATOR BAKER: I would hesitate to upset what we have out there, because going backwards, and I know we've talked about that in this committee in past years. I just can't support that, so I guess it would be from this point forward maybe if we change that policy.

CATHERINE LANG: And certainly I think that of the nine counties that voted for state assumption and for those that did it subsequently but were rejected, part of their interest was the reduction of the need for property tax dollars to fund that activity, and the ability to have that activity funded by state dollars.

SENATOR CONNEALY: Other questions? Senator Raikes.

SENATOR RAIKES: Well, but, you know, it would be consistent with reducing expenditures, property tax expenditures, for assessment if you reduced it, instead of 100 percent, you reduce it 50 percent.

CATHERINE LANG: You would still be reducing it, that's correct, but it would be a change in the policy.

SENATOR RAIKES: Kind of.

CATHERINE LANG: By half.

SENATOR RAIKES: There you go.

SENATOR CONNEALY: Senator Baker.

SENATOR BAKER: I have one other comment and a question, but I think I'm correct. Senator Raikes keeps posing these questions and it spurs me to thinking. Those funds that were used in the county assessor's office, those are restricted county funds so they can't be...they have to be taken out of the budget.

CATHERINE LANG: Yes. That was not true the very, very first year of it, but then we corrected that...

SENATOR BAKER: But then we changed that.

CATHERINE LANG: Yes.

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SENATOR BAKER: So if you took \$100,000 out of Loup County...is that who you said had requested?

CATHERINE LANG: Yes.

SENATOR BAKER: Those are funds taken out of their budget authority. They're gone, correct.

CATHERINE LANG: Just so you know, for example, Loup County was \$16,000.

SENATOR BAKER: They were paying \$16,000 a year?

CATHERINE LANG: Um-hum.

SENATOR BAKER: And they are asking you to take this over, and right now we can't do that, huh? Well, you can't get it appropriated.

CATHERINE LANG: Correct.

SENATOR BAKER: Hum. I thought maybe it would be more than that, and I know Loup County...

GEORGE KILPATRICK: It's a small county.

CATHERINE LANG: Small county.

SENATOR BAKER: I know it is, but... I know, but that's real...

CATHERINE LANG: And interesting because it is a small county. It's an ex officio county, so there were no employees that would transfer to us. Actually, the only issue was paying for an administrative and appraisal system, and then our analysis was, we would use existing staff to run the office.

SENATOR BAKER: That's why we're here; that makes my case. And here we are sitting with Loup County, \$16,000, you could take this over for. Obviously, the bill says \$16,000 or less you would have to do it for. And that, to me, seems like a path we ought to go and give you that discretion of whether you want to do it, of course. But, in this case, it seems silly not to. Now I am preaching to the choir.

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SENATOR RAIKES: Any other questions? I see none. Thank you, Madame Property Tax Administrator. Other proponents, LB 1216? Opponents, LB 1216?

LARRY DIX: (Exhibit 9) Members of the choir, both of you, I guess--there are two of you--Senator Raikes and Senator Baker. For the record, my name is Larry Dix. I am here to testify in opposition to this particular bill. And what I am handing out is more of a visual...and I have not seen the amendment, so I have no clue as to what it says or what it does. But what I'm handing out is just so everybody sort of visually can see where the nine counties are. And the bottom portion of that is under the assumption process. This is saying if we only look at counties that are contiguous today, these are the only counties that would be available to be assumed if we follow that path. So it sort of paints a little bit of a graphical picture of where they are at. It certainly doesn't do anything for the Panhandle. And now my understanding is, we have a population number out there of 10,000 which I would say would be an arbitrary number. I don't know that there has been any study done if it is 10,000 or not. But if it...and, again, I haven't seen the amendment, so if the amendment says it has to be 10,000 or less and adjoining, you certainly have immediately said for most of the folks in the Panhandle, we're not willing to help you because you don't have anybody adjoining. And, again, I don't know if that is specifically what the amendment says. It doesn't do anything for the southeast part of the state, and for some of the smaller counties, they are still left out.

SENATOR LANDIS: But, Larry, what's your argument here? Why is that wrong? What's wrong with where we are going in this direction?

LARRY DIX: Well, what's wrong with it is, one, we have never been a proponent of state assessed; the association never has. We believe it takes away local control. We have always stood on that ground. County consolidation, we have always stood on that ground. Number two, currently in statute it always...it is moving always to the direction of taking away from the counties, but there is no provision in there if a county would want to step forward and say, I want to take the assessment process back. There was never any

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provision in there. And so I think if we're going to have the street that's driven that says, okay, 10,000 or less and adjoining, we ought to have the move back, and especially if we go down...

SENATOR LANDIS: Oh, but Larry, really, let's imagine that Tom rewrote this thing and said either way, in and out; you would still be in opposition, wouldn't you, because it's local control.

LARRY DIX: Absolutely, because it's local control.

SENATOR LANDIS: Yeah, exactly. It doesn't get saved because we would have the authority to bring it back.

LARRY DIX: No. But what I'm saying is, it would be something that I think we should consider because there are some counties out there that have had that thought.

SENATOR LANDIS: Yeah, but I've got to tell, there is a hard thing that says, you know what you ought to stick into your bill, which we're going to fight anyway, a provision which gives us authority and makes the structure harder to manage and rely on, but don't worry, even if you did it, we would still be opposed to the bill.

LARRY DIX: Right, so we'll bring...

SENATOR LANDIS: It's a pretty hard posture to be in, Larry.

LARRY DIX: So we'll bring a bill next year that just says to change that, and I appreciate that. But it is; it's a local control issue. Certainly, we are absolutely in no way saying that these counties, there are problems out in these counties being state-assessed counties. We think they are being run just fine. But it truly is a local control issue.

SENATOR LANDIS: There we are. That's the nub, isn't it.

LARRY DIX: It is, and it always will be.

SENATOR LANDIS: Okay. Yes. Now I guess Senator Baker has got some questions that will somehow turn you not into a local control advocate. He's got a line of questions that are going to turn you around here. I love this. Tom, put

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him on the sot.

SENATOR BAKER: This statement that in a case...now it is a local control issue. Those county commissioners have to vote to ask to be taken over as state-assessed counties. That's who makes the decision, is that not correct? The local...the county commissioners or supervisors have to do this.

LARRY DIX: The local county board has to make the request, and...

SENATOR BAKER: That's local control. The local county board, you just said, then has to make the request. They are not being forced to do this.

LARRY DIX: But you are starting to limit the counties which can do it because...

SENATOR BAKER: Did you ever hear of the old farmer that never bought any land except what was beside him? Pretty soon, he owned the whole state.

LARRY DIX: But, again, you are starting to limit it because you are saying less than 10,000. Now, if Douglas County would come forth, they are a county that borders. And my guess is, immediately everybody would throw up their hands and say, oh, my gosh, we cannot afford Douglas County; I think we've been down that path. So I'm a little perplexed by that when we start to go down that contiguous area and we're selective.

SENATOR BAKER: The reason that's drafted that way is we can't take everything over, and there's a process, a two-year rolling process, to apply these things, so we started with 10,000. That's the rationale. We can't take these all over next year, so we had to put some restrictions on them.

LARRY DIX: And the other thing fundamentally that I believe has always been a problem with state-assessed, is that if I live in Lancaster County, I'm paying for my assessment process in Lancaster and Dakota and Dodge and Garfield, Greeley, Harlan, Hitchcock, Keith, Saunders, and Sherman. Senator Landis lives in Lancaster County. He is paying for

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part of that bill. So, fundamentally, I think that's wrong. If you want to take them all over--100 percent.

SENATOR BAKER: So you would be in favor of just taking everything over, right?

LARRY DIX: It... We...

SENATOR BAKER: What?

LARRY DIX: And I think it even goes back to the other bills: if you are going to take them all over, take them all over, move them out of the courthouse, pay your own rent, pay your own way, control the whole situation.

SENATOR BAKER: Question: Why would we want to move them out of the courthouse when there is obviously office space to get there now, and why not work a deal?

LARRY DIX: Then we should be paying rent for that space.

SENATOR BAKER: When we're providing a service to the counties, it lessens their cost, I guess, and then pay rent, too. I'm finished, Mr. Chairman. Thank you.

SENATOR LANDIS: Tom is not going to persuade you because not only are those your convictions, but you are paid to have those convictions.

LARRY DIX: (Laugh)

SENATOR LANDIS: However, you are not going to persuade Tom, not because he is paid but just because he's stubborn. So we are probably not going to change each other's mind here. But let's see what we're going to do with Raikes? Let's see where Ron is on this one and see what he thinks. Ron, have you got some questions for Larry?

SENATOR RAIKES: Sure, I'll come up with a couple of questions.

SENATOR LANDIS: Yeah, jump in. It's Thursday, quarter till three. Snow is coming down; got nothing better to do. Are there questions for...?

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SENATOR RAIKES: You do say you think that the state-assessed...your reports from counties indicate that the state assessment is working fine.

LARRY DIX: You know, I think it would be the same if you take 93 counties or you take nine state-assessed. You're going to have issues where somebody says they are doing a good job, they are doing a bad job. We have reports at our office that in some of those counties, yeah, things aren't as good as what they would like. But when you are talking about property taxes, typically people aren't talking about is the office being mismanaged. Most of the times they are complaining because their tax bill is too high. And I think we see that in counties that are not state-assessed and state-assessed, so.

SENATOR RAIKES: Well, an interesting point: Local control with assessment. I could agree with local control on jails and zoning, but assessment has a statewide function. We distribute state aid based on equalization which requires a uniformity across the state in valuation of property. So why are 93 separate assessors a better arrangement than 93 less 9, or 93 less 20?

LARRY DIX: Well, I would go back to say, if you believe, firmly believe, that there is no local issues here, you should take the whole thing.

SENATOR RAIKES: And pay rent.

LARRY DIX: And pay rent. And pay rent.

SENATOR LANDIS: (Laugh) Thank you, Larry. Are there questions for Mr. Dix?

LARRY DIX: And I promise that even though Senator Baker will not be around, and I believe Cathy...

SENATOR LANDIS: And I will.

LARRY DIX: Cathy will be around for awhile; I will be around; and we'll carry on the institutional memory on behalf of Senator Baker.

SENATOR LANDIS: Thank you.

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LARRY DIX: Thank you.

SENATOR LANDIS: Thank you. Appreciate it, Larry. Other opponents? Neutral testimony? Senator Baker, for the last word.

SENATOR BAKER: Interesting comments. I still feel strongly. Senator Raikes, it's not just statewide, it's between counties overlapping, educational services units. We need uniformity. This is a step, a small step, judging from our Property Tax Administrator.

SENATOR LANDIS: A haltingly small step.

SENATOR BAKER: A haltingly small step to get started down that process. Thank you very much.

SENATOR LANDIS: Thank you, Senator Baker. Thank you for coming to the hearing today. We will not be having an Executive Session. We are done for the day's activities and we'll be here next week on Wednesday and Thursday, but not Friday of next week.